

In the Description:

Page 1, line 1, before "**FRUIT**" please insert --**PROCESS FOR THE PRODUCTION OF--**.

### R E M A R K S

This patent application presently includes Claims 1-17, all of which stand rejected. The claims are amended and all rejections are respectfully traversed.

Claims 1-17 were rejected over Steinwand or Reznik in view of the "prior art." This rejection is respectfully traversed. Neither Steinwand, nor Reznik, nor the combination thereof renders the present claims obvious.

The Steinwand patent discloses a method for impregnating whole grapes with a sugar syrup under heat, while avoid disintegration of the grapes. The process involves subjecting the grapes to the hydrolyzing action of a sodium hydroxide solution, which modifies the cellulose, fibrous and starchy parts of the fruit (i.e. the internal structure), and puncturing the skin and pulp, to permit impregnation of the grapes with the syrup under heat.

The Reznik patent discloses a system and process for rehydration of dates. The process involves fissuring the dates and placing them in a sealed enclosure, covered with water. When the enclosure is evacuated, air is drawn out

of the dates. Subsequently, when air is reintroduced to the enclosure, the resulting pressure causes water to be forced into the dates in place of the air which was drawn out.

In contrast to Steinwand and Reznik, the present invention relates a process for introducing water activity controlling solutes into dried fruit. Claim 1 includes the steps of:

- (a) provided dried fruit of a moisture content between 5 to 40% or more;
- (b) disrupting the structure of the fruit while maintaining the integrity thereof;
- (c) reacting with the fruit a solution containing one or more water activity controlling solutes, and drying to a desired moisture content.

Regarding the Steinwand patent, it should be noted that it relates to impregnating a sugar syrup into fruits and neither teaches nor suggests anything about introducing a water activity controlling solute. In addition, the patent relates to treating whole grapes and not dried fruit with a moisture content of 5 - 40%. With the Steinwand patent involving these two major differences, there is no reason to believe that those skilled in the art would look to it for anything relevant to the present invention. Indeed, it is quite evident that Steinwand does not even

constitute analogous art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Since neither of these requirements was met in the present instance, the examiner may not rely on the Steinwand patent.

However, even overlooking this, for the purpose of argument, it could hardly be argued that the Steinwand process maintains the integrity of the fruit. Indeed, it requires both the skin and pulp of the fruit to be punctured. This can be seen in Fig. 3 of the patent, where the punctures extend at least half way into the body of the grape, so its integrity is clearly not maintained. Furthermore, there is not the slightest suggestion in Steinwand that the fruit be treated in any manner with a water activity controlling solute. Accordingly, the disclosure of the Steinwand patent is not only inapposite to the present invention, but lacking major claim limitations. Accordingly, claim 1 is not obvious over Steinwand and is believed to be allowable thereover.

Regarding the Reznik patent, it, too, teaches nothing about introducing water activity controlling solutes into a fruit. Moreover, the Reznik patent is entirely dependent on the use of a vacuum to draw water into the dates, that is entirely unnecessary in the present invention. A reference should be considered as a whole, and portions arguing against or teaching away from the claimed

invention must be considered. *Bausch & Lomb, Inc. v. Barnes -Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 USPQ 416 (Fed. Cir 1986). Considering Reznik as a whole, the present process is not obvious over Reznik and is believed to be allowable thereover.

Moreover, the combination of Steinwand and Reznik still does not avoid the shortcomings of these references discussion above. Therefore, the present claims are also believed to be allowable over the combination of Steinwand and Reznik. The Examiner made reference to other "prior art" in rejecting claim 1, but there is not the slightest suggestion anywhere in the record of what that prior art might be. Accordingly, no further response is possible or necessary, in the present instance.

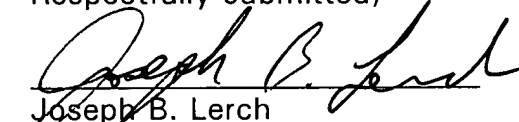
Claim 2 has limitation similar to claim 1 and is allowable over Steinwand, Reznik, or the combination thereof for the same reasons set forth above.

The remaining claims depend from claim 1 or claim 2, either directly or indirectly, and are believed to be allowable based upon their dependence from an allowable claim. However, these claims are also believed to allowable on their own merits, in that they disclose additional features not taught or suggested by the prior art.

Applicants' attorney has made every effort to place this patent application in condition for allowance. It is therefor requested that this patent

application, as a whole, receive favorable reconsideration and that all of the claims be allowed as presently constituted. Should there remain any unanswered questions, the Examiner's is requested to call the Applicant's undersigned attorney at the telephone number indicated below.

Respectfully submitted,

  
Joseph B. Lerch  
Reg. No. 26,936  
Attorney For Applicant(s)

DARBY & DARBY P.C.  
805 Third Avenue  
New York, NY 10022  
(212) 527-7700